

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Agricultural Finance Authority

RULE CITATION: 24 NCAC 02D .0101, .0102, .0103, .0104, and .0105 (Temporary)

RECOMMENDATION DATE: December 13, 2024

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Pursuant to G.S. 150B-21.1 (a3),

Unless otherwise provided by law, the agency shall:

(1) At least 30 business days prior to adopting (emphasis added) a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) At least 30 business days prior to adopting (emphasis added) a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

William W. Peaslee
Commission Counsel

On the original Forms .0500 submitted with the above captioned, the agency stated that the rules were submitted to the Codifier of Rules on September 5, 2024 pursuant to G.S. 150B-21.1(a3)(1), that the comment period was from September 11, 2024 to October 2, 2024 pursuant to G.S. 150B-21.1(a3)(3), and that a public comment hearing was held on September 17, 2024 pursuant to G.S. 150B-21.1(a3)(4).

The agency did not provide a date for the notice pursuant to G.S. 150B-21.1(a3)(2) but rather provided an internet link to the Secretary of State's website which appears to be a calendar of when the agency held a meeting. The link was unrevealing as to when notice was provided.

The Forms .0500 stated that the adoption date for the above captioned rules was on June 11, 2024. It appeared to staff counsel that the agency approved the rules prior to fulfilling the pre-adoption requirements of G.S. 150B-21.1(a3).

On December 6, 2024, staff counsel emailed the agency rulemaker asking for confirmation of the June 11, 2024 adoption date and suggested that G.S. 150B-21.1(a3) be reviewed prior to responding. Having not received a reply, on December 12, 2024, staff counsel requested a response to the December 6, 2024 email.

On December 12, 2024, the agency submitted amended Forms .0500. Except for the date of adoption, the forms were identical to those previously submitted.

The agency now states that the adoption date is August 8, 2024.¹

Like its predecessor, this new adoption date is, by the agency's own filings, prior to the date of submission to the Codifier and the agency's comment period. It remains unclear when the agency provided notice to its mailing list pursuant to G.S. 150B-21.1(a3)(2).

1 THE TEMPORARY RULES SUBMITTED FOR CONSIDERATION ARE VERBATIM TO THE TEMPORARY RULES TO WHICH THE RULES REVIEW COMMISSION (RRC) OBJECTED AT ITS AUGUST 28, 2024 MEETING. THE AVERRED AUGUST 8, 2024 ADOPTION DATE FOR THE ABOVE CAPTIONED RULES PREDATES STAFF COUNSEL'S REQUEST FOR CHANGES (AUGUST 22, 2024) AND OPINIONS (AUGUST 16 AND 23, 2024) RECOMMENDING OBJECTION FOR THE AUGUST RRC MEETING. IT IS CURIOUS THAT THE AGENCY WOULD ADOPT ANEW TEMPORARY RULES FOR WHICH, AT THAT TIME, THE RRC HAD GIVEN NO HINT WOULD BE IN PERIL OF OBJECTION.

Accordingly, staff counsel recommends objection to the rule pursuant to G.S. 150B-21.9(a)(4) for failure to adopt the temporary rules in accordance with Part 2 of Article 2 of the Administrative Procedure Act.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) **It was adopted in accordance with Part 2 of this Article.**

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - a. No wake zones.
 - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
 - c. Hunting or fishing bag limits.
 - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
 - a. In accordance with the provisions of G.S. 163-22.2.
 - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
 - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

- (17) To maximize receipt of federal funds for the Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, the agency shall:

- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. - When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules

must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement within 30 days of the notification. If the agency fails to supplement its statement of need with additional findings or submit a new statement to the Commission within 30 days, or submits written notice within 30 days to the Commission that the agency does not intend to supplement its statement of need with additional findings or submit a new statement, the Commission or its designee shall immediately return the rule to the agency. If the agency provides additional findings or submits a new statement within 30 days of the notification, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment within 30 days after notification of the return of the rule by the Commission in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes within 30 days of the date the rule is returned to the agency.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(b4) When the Commission returns to an agency a proposed permanent rule intended to replace a temporary rule, the holder of a permit from the agency may submit revised plans for a revised permit removing the impacts of the returned rule if all of the following conditions apply:

- (1) The permit was conditioned upon adherence to the requirements of a temporary rule that the returned proposed permanent rule was intended to replace.
- (2) The revised plans comply with all other applicable regulations.

The agency shall review the revised plans and approve or deny the revised permit within 45 days of the receipt of the revised plans. The agency may not impose an additional permit fee for review of a revised plan resulting from the expiration of a temporary rule.

(c) Standing. - A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. - A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
- (4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
- (5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.
- (6) Notwithstanding subdivision (5) of this subsection, 12 months after the effective date of the temporary rule.

(e) Publication. - When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Agricultural Finance Authority	
2. Rule citation & name: 24 NCAC 02D .0101 PURPOSE	
3. Action: ☒ Adoption ☐ Amendment ☐ Repeal	
4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date: n/a	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 9/5/24 b. Proposed Temporary Rule published on the OAH website: 9/9/24 c. Public Hearing date: 9/17/24 d. Comment Period: 9/11/24 - 10/2/24 e. Notice pursuant to G.S. 150B-21.1(a3)(2): https://www.sosnc.gov/online_Services/Calendar (see included attachment LAHC) f. Adoption by agency on: 8/8/24 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: earliest effective date established by G.S. 150B- 21.1(b) and G.S.150B-21.3	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. ☐ A serious and unforeseen threat to the public health, safety or welfare. ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: House Bill 259, Session Law 2023-134 Effective date: October 3rd, 2023 ☐ A recent change in federal or state budgetary policy. Effective date of change: ☐ A recent federal regulation. Cite: Effective date: ☐ A recent court order. Cite order: ☐ Other: See below. Explain: The General Assembly specifically authorized and mandated the adoption of temporary rules in House Bill 259 / S.L.2023-134, Section 10.1(c), which states that the NCAFA shall adopt temporary rules to implement this section as soon as practicable. . . These rules are submitted in order to comply with the General Assembly's mandate for temporary rules under the Large Animal Health Enhancement Act as established by House Bill 259/S.L. 2023-134 (available at https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf starting on p. 322) These rules have been discussed and approved by both the Large Animal Healthcare Enhancement Advisory Committee on June 10, 2024; and approved via vote of the Board of the Directors of the North Carolina Agricultural Finance Authority on June 11, 2024. It is critical that these rules be approved in an expedient manner to establish a system by which the monies allocated to this fund by the General Assembly can be distributed as directed. As stated in NCGS § 106-1079, "The purpose of the fund is to make grants to encourage veterinary students to enter and stay in large animal veterinarian practice and to support large animal veterinarian practices to enable them to better serve their designated counties." Additionally, in an abundance of caution, and to the extent is alleged to be necessary, NCAFA is also submitting a written request for a waiver of the 210-day period contemplated by NCGS § 150B-21.1(a2).	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

Phone:

(919) 745-9356

E-Mail:

anna.hayworth@ncagr.gov

Agency contact, if any:

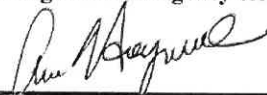
Robert Hosford

Phone:

n/a

E-Mail: largeanimalvetgrants@ncagr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

E-Mail: anna.hayworth@ncagr.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

24 NCAC 02D .0101 is proposed for adoption with changes under temporary procedures as follows:

CHAPTER 02 – N.C. AGRICULTURAL FINANCE AUTHORITY

SUBCHAPTER 02D - LARGE ANIMAL HEALTHCARE ENHANCEMENT ADVISORY COMMITTEE

24 NCAC 02D .0101 PURPOSE

This Chapter describes the operating procedures for the Large Animal Healthcare Enhancement Advisory Committee [and the Chair under the guidance of the North Carolina Department of Agriculture and Consumer Services, and] and, the North Carolina Agricultural Finance Authority implementing the Large Animal Healthcare Enhancement Fund for the enhancement of large animal veterinary services in North Carolina. Procedures and [guidelines]requirements for participating applicants are also [described.]established. The purpose of the program is to provide grants to encourage veterinary [students]practitioners to sustainably serve as large or mixed animal veterinarians in underserved areas in the state of North Carolina, and to provide additional resources for large or mixed animal veterinary practices that operate in underserved areas to help them to better serve their communities.

History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);

Temporary Adoption Eff. January 1, 2025.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Agricultural Finance Authority	
2. Rule citation & name: 24 NCAC 02D .0102 DEFINITIONS	
3. Action: ☒ Adoption ☐ Amendment ☐ Repeal	
4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date: n/a	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 9/5/24 b. Proposed Temporary Rule published on the OAH website: 9/9/24 c. Public Hearing date: 9/17/24 d. Comment Period: 9/11/24 - 10/2/24 e. Notice pursuant to G.S. 150B-21.1(a3)(2): https://www.sosnc.gov/online_Services/Calendar (see included attachment LAHC) f. Adoption by agency on: 8/8/24 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: earliest effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. ☐ A serious and unforeseen threat to the public health, safety or welfare. ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: House Bill 259, Session Law 2023-134 Effective date: October 3rd, 2023 ☐ A recent change in federal or state budgetary policy. Effective date of change: ☐ A recent federal regulation. Cite: Effective date: ☐ A recent court order. Cite order: ☐ Other: See below. Explain: The General Assembly specifically authorized and mandated the adoption of temporary rules in House Bill 259 / S.L. 2023-134, Section 10.1(c), which states that the NCAFA shall adopt temporary rules to implement this section as soon as practicable. . . These rules are submitted in order to comply with the General Assembly's mandate for temporary rules under the Large Animal Health Enhancement Act as established by House Bill 259/S.L. 2023-134 (available at https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf starting on p. 322) These rules have been discussed and approved by both the Large Animal Healthcare Enhancement Advisory Committee on June 10, 2024; and approved via vote of the Board of the Directors of the North Carolina Agricultural Finance Authority on June 11, 2024. It is critical that these rules be approved in an expedient manner to establish a system by which the monies allocated to this fund by the General Assembly can be distributed as directed. As stated in NCGS § 106-1079, "The purpose of the fund is to make grants to encourage veterinary students to enter and stay in large animal veterinarian practice and to support large animal veterinarian practices to enable them to better serve their designated counties." Additionally, in an abundance of caution, and to the extent is alleged to be necessary, NCAFA is also submitting a written request for a waiver of the 210-day period contemplated by NCGS § 150B-21.1(a2).	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

Phone:

(919) 745-9356

E-Mail:

anna.hayworth@ncagr.gov

Agency contact, if any:

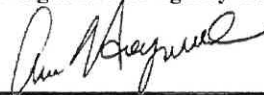
Robert Hosford

Phone:

n/a

E-Mail: largeanimalvetgrants@ncagr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

E-Mail: anna.hayworth@ncagr.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

24 NCAC 02D .0102 is proposed for adoption with changes under temporary procedures as follows:

24 NCAC 02D .0102 DEFINITIONS

In addition to the terms defined in Article 88 of Chapter 106 of the North Carolina General Statutes, the following terms used in this Chapter have the following meanings:

- (1) “Applicant” means a large animal veterinarian as defined in G.S. 106-1072 who applies for funds from the Large Animal Healthcare Enhancement Fund.
- (2) “Application” means ~~[a form]~~ the “Large Animal Healthcare Enhancement Fund Application Form” detailed in Rule .0103(c), developed and made available by the Large Animal Healthcare Enhancement Advisory Committee, including, but not limited to, any attachments and other information or documentation required by the form, for an applicant to complete and submit to the advisory committee to request a grant from the fund.
- (3) “Chair” or “Commissioner” means the chair of the advisory committee who is also the Commissioner of Agriculture.
- (4) “Grant” means an amount of money designated by the advisory committee to be given to a qualified applicant who has been chosen by the advisory committee.
- (5) “Financial records” means documentation that provides evidence or a summary of business transactions, which may include invoices, receipts, and general monetary ledgers.
- ~~[(5)](6)~~ “Grant recipient” means a qualified applicant who has received a grant.
- ~~[(6)](7)~~ “Large animal” means any of the animals referenced in G.S. 106-1072(8) and (9).
- ~~[(7)](8)~~ “Qualified applicant” means a large animal veterinarian (as defined in G.S. 106-1072(8)) and who otherwise meets the criteria described in this Rule and in Article 88 of Chapter 106 of the North Carolina General Statutes.

History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);
Temporary Adoption Eff. January 1, 2025.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

Phone:

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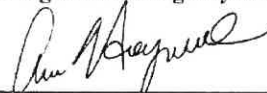
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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

E-Mail: anna.hayworth@ncagr.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

24 NCAC 02D .0103 is proposed for adoption with changes under temporary procedures as follows:

24 NCAC 02D .0103 EVALUATION OF APPLICATIONS

(a) Applicants for funding from the fund shall submit a completed application within 60 days from the date of the public announcement of requests for proposals (the “application deadline”).

(b) Applications and instructions shall be available online at www.ncagr.gov.

(c) To be eligible for consideration for funding, applicants shall complete the application, which shall be titled the “Large Animal Healthcare Enhancement Fund Application Form,” and which shall contain the following information:

(1) identifying information such as location, business name, and contact information;

(2) statement from the applicant that acknowledges and agrees that in the event that the applicant’s veterinary license expires, is revoked, or is suspended during the fiscal year in which the grant is awarded, or if the applicant fails to practice at least 30% large animal veterinary medicine in the designated counties named in the applicant’s application, the applicant shall repay the entire amount received from the fund;

(3) statement from the applicant that the applicant shall have no conflicting service obligation that would prevent the State from benefitting from the applicant’s services, with the exception of service in the National Guard or military reserve;

(4) an essay which describes the applicant’s professional ambition and how those professional goals fit with the intent of the fund, which shall be submitted in a format using an eight[~~fund (eight)~~] hundred word maximum, typed in 12-point Times New Roman font, and [~~double spaced~~];]double spaced;

(5) three personal or professional references listing the individual’s name, telephone number, and email address; and

(7) [~~Certification~~]certification that the applicant currently practices a minimum of 30% large animal veterinary medicine in at least one designated county.

(d) Each completed application shall be evaluated by the advisory committee staff based on the information provided in the application and in accordance with the fund criteria described in this rule and in Article 88 of Chapter 106 of the North Carolina General Statutes.

(e) The staff shall review all applications for completeness. If staff deems an application incomplete in that it does not contain information required by statute or these rules, the applicant [~~may~~]shall be asked by the authority staff to complete the application within seven days if the application deadline has expired.

(f) After the staff has reviewed each application for completeness, the advisory committee shall then review the applications prepared by each applicant and shall make recommendations [~~to the Commissioner~~]on applicants for funding.

(g) All applicants shall meet the following criteria for grant eligibility:

(1) the applicant must practice veterinary medicine in at least one of the approved counties pursuant to G.S. 106-1074;

(2) the applicant must be a currently licensed veterinarian in the state of North Carolina; and

1 (3) the applicant shall be practicing at least thirty percent cumulatively of their veterinary operation
2 within the field of large animal care.

3 ~~[(g)]~~(h) Grants shall be awarded contingent on the availability of sufficient funds to do so. Grants shall be conveyed
4 to grant recipient(s) through contracts with the North Carolina Agricultural Finance Authority. If the ~~[North Carolina~~
5 ~~Agricultural Finance Authority]~~ advisory committee determines that grants are not being used for the purpose for which
6 they were awarded, the fund shall immediately cease making payments under the grant schedule and shall demand
7 return of all amounts from the grant pursuant to G.S. 106-1074. Grant recipient(s) must reimburse the fund all funds
8 that the ~~[North Carolina Agricultural Finance Authority]~~ advisory committee determines to have been spent in violation
9 of G.S. 106-1074(e).

10
11 *History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);*
12 *Temporary Adoption Eff. January 1, 2025.*

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

Phone:

(919) 745-9356

E-Mail:

anna.hayworth@ncagr.gov

Agency contact, if any:

Robert Hosford

Phone:

n/a

E-Mail: largeanimalvetgrants@ncagr.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

E-Mail: anna.hayworth@ncagr.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

24 NCAC 02D .0104 is proposed for adoption with changes under temporary procedures as follows:

24 NCAC 02D .0104 GRANT AGREEMENT

(a) ~~[Upon approval,]~~ The advisory committee shall approve applications based on the criteria set forth by Article 88 of Chapter 106 of the North Carolina General Statutes. Once approved by the committee, a written agreement shall be executed between the grant recipient(s) and the North Carolina Agricultural Finance Authority.

(b) The agreement shall define the North Carolina Agricultural Finance Authority's and grant recipient's responsibilities and obligations, the project period, project scope, and the amount of grant assistance.

(c) The approved application and any support documentation submitted by the applicant shall become a part of the grant agreement.

(d) The grant agreement may be amended upon mutual consent and approval by the North Carolina Agricultural Finance Authority and the grant recipient(s). The grant recipient(s) shall submit a written request for amendment to the North Carolina Agricultural Finance ~~[Authority.]~~ Authority. Any amendment for consideration must adhere to the eligibility requirements set forth by Article 88 of Chapter 106 of the North Carolina General Statutes.

(e) Grant payments shall be made only for activities within the grant contract period and projects may not begin until the North Carolina Agricultural Finance Authority and grant recipient(s) sign the agreement.

(f) The grant agreement shall include a requirement that the grant recipient(s) understands, acknowledges, and agrees that in the event that the grant recipient'(s') veterinary license expires, is revoked, or is suspended during the fiscal year in which the grant is awarded, or the grant recipient(s) fails to practice a minimum of 30% large animal veterinary medicine in at least one designated county named in the grant recipient'(s') application, the grant recipient(s) shall repay the entire amount received from the Fund.

History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);

Temporary Adoption Eff. January 1, 2025.



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Agricultural Finance Authority	
2. Rule citation & name: 24 NCAC 02D .0105 REPORTING	
3. Action: ☒ Adoption ☐ Amendment ☐ Repeal	
4. Was this an Emergency Rule: ☐ Yes Effective date: n/a ☒ No	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 9/5/24 b. Proposed Temporary Rule published on the OAH website: 9/9/24 c. Public Hearing date: 9/17/24 d. Comment Period: 9/11/24 - 10/2/24 e. Notice pursuant to G.S. 150B-21.1(a3)(2): https://www.sosnc.gov/online_Services/Calendar (see included attachment LAHC) f. Adoption by agency on: 8/8/24 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: earliest effective date established by G.S. 150B- 21.1(b) and G.S.150B-21.3	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. ☐ A serious and unforeseen threat to the public health, safety or welfare. ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: House Bill 259, Session Law 2023-134 Effective date: October 3rd, 2023 ☐ A recent change in federal or state budgetary policy. Effective date of change: ☐ A recent federal regulation. Cite: Effective date: ☐ A recent court order. Cite order: ☐ Other: See below. Explain: The General Assembly specifically authorized and mandated the adoption of temporary rules in House Bill 259 / S.L.2023-134, Section 10.1(c), which states that the NCAFA shall adopt temporary rules to implement this section as soon as practicable. . . These rules are submitted in order to comply with the General Assembly's mandate for temporary rules under the Large Animal Health Enhancement Act as established by House Bill 259/S.L.2023-134 (available at https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf starting on p. 322) These rules have been discussed and approved by both the Large Animal Healthcare Enhancement Advisory Committee on June 10, 2024; and approved via vote of the Board of the Directors of the North Carolina Agricultural Finance Authority on June 11, 2024. It is critical that these rules be approved in an expedient manner to establish a system by which the monies allocated to this fund by the General Assembly can be distributed as directed. As stated in NCGS § 106-1079, "The purpose of the fund is to make grants to encourage veterinary students to enter and stay in large animal veterinarian practice and to support large animal veterinarian practices to enable them to better serve their designated counties." Additionally, in an abundance of caution, and to the extent is alleged to be necessary, NCAFA is also submitting a written request for a waiver of the 210-day period contemplated by NCGS § 150B-21.1(a2).	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable . . .

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

Phone:

(919) 745-9356

E-Mail:

anna.hayworth@ncagr.gov

Agency contact, if any:

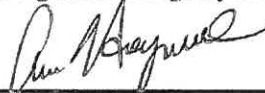
Robert Hosford

Phone:

n/a

E-Mail: largeanimalvetgrants@ncagr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

E-Mail: anna.hayworth@ncagr.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

24 NCAC 02D .0105 is proposed for adoption with changes under temporary procedures as follows:

24 NCAC 02D .0105 REPORTING

(a) Grant recipients shall submit to the North Carolina Agricultural Finance Authority a written progress report within 180 days of receipt of the grant.

(b) Written reports shall describe the status of the project, progress toward achieving program objectives, notable occurrences, any problems encountered, and steps taken to overcome the problems, ~~[and an affidavit from the grant recipient stating under oath or affirmation that, during the fiscal year in which the grant is awarded,]~~ and a statement of affirmation that supports the following:

(1) the grant recipient's veterinary license has not expired, been revoked, or been suspended, and

(2) the grant recipient(s) is currently practicing a minimum of 30% large animal veterinary medicine across their cumulative practice in at least one designated county named in the grant recipient's(s') application.

(c) Upon completion of the project, the grant recipient ~~[must]~~ shall make a final written report to the North Carolina Agricultural Finance Authority that shall include project accomplishments and benefits, all expenditures by line item as established in the application, ~~[and an affidavit from the grant recipient stating under oath or affirmation that, during the fiscal year in which the grant is]~~ and a statement of affirmation that supports the following:

(1) the grant recipient's veterinary license has not expired, been revoked, or been suspended, and

(2) the grant recipient(s) practiced a minimum of 30% large animal veterinary medicine across their cumulative practice in at least one designated county named in the grant recipient's(s') application.

(d) The North Carolina Agricultural Finance Authority shall review the progress reports for completeness, which shall include a showing of how the project is meeting its stated goals and performance standards. If the North Carolina Agricultural Finance Authority finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grant recipient(s) shall be notified of the deficiency and ~~[must]~~ shall provide a changed and corrected report within 30 business days. A corrected or changed report shall be submitted to the North Carolina Agricultural Finance Authority within 30 business days.

(e) All grant funds shall be spent within 180 days of receipt by the grant recipient. If grant funds are not spent by the grant recipient by the end of this 180-day period, the grant funds shall be returned to the North Carolina Agricultural Finance Authority.

~~[(e)]~~(f) Grant recipient(s) shall submit monitoring reports annually to the North Carolina Agricultural Finance Authority by email at ~~[largeanimalvetgrants@ncagr.gov or]~~ largeanimalvetgrants@ncagr.gov, as well as mailed to or ~~[by hand delivery at]~~ hand delivered to 1101 Spring Forest Road, Suite 150, Raleigh, North Carolina 27615. The monitoring reports shall include all the reporting requirements set forth in Paragraph (b).

*History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);
Temporary Adoption Eff. January 1, 2025.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Agricultural Finance Authority	
2. Rule citation & name: 24 NCAC 02D .0106 RECORDS	
3. Action: ☒ Adoption ☐ Amendment ☐ Repeal	
4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date: n/a	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 9/5/24 b. Proposed Temporary Rule published on the OAH website: 9/9/24 c. Public Hearing date: 9/17/24 d. Comment Period: 9/11/24 - 10/2/24 e. Notice pursuant to G.S. 150B-21.1(a3)(2): https://www.sosnc.gov/online_Services/Calendar (see included attachment LAHC) f. Adoption by agency on: 8/8/24 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: earliest effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. ☐ A serious and unforeseen threat to the public health, safety or welfare. ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: House Bill 259, Session Law 2023-134 Effective date: October 3rd, 2023 ☐ A recent change in federal or state budgetary policy. Effective date of change: ☐ A recent federal regulation. Cite: Effective date: ☐ A recent court order. Cite order: ☐ Other: See below. Explain: The General Assembly specifically authorized and mandated the adoption of temporary rules in House Bill 259 / S.L.2023-134, Section 10.1(c), which states that the NCAFA shall adopt temporary rules to implement this section as soon as practicable. . . These rules are submitted in order to comply with the General Assembly's mandate for temporary rules under the Large Animal Health Enhancement Act as established by House Bill 259/S.L.2023-134 (available at https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf starting on p. 322) These rules have been discussed and approved by both the Large Animal Healthcare Enhancement Advisory Committee on June 10, 2024; and approved via vote of the Board of the Directors of the North Carolina Agricultural Finance Authority on June 11, 2024. It is critical that these rules be approved in an expedient manner to establish a system by which the monies allocated to this fund by the General Assembly can be distributed as directed. As stated in NCGS § 106-1079, "The purpose of the fund is to make grants to encourage veterinary students to enter and stay in large animal veterinarian practice and to support large animal veterinarian practices to enable them to better serve their designated counties." Additionally, in an abundance of caution, and to the extent is alleged to be necessary, NCAFA is also submitting a written request for a waiver of the 210-day period contemplated by NCGS § 150B-21.1(a2).	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2023-134, Section 10.1(c) specifically requires that The Agricultural Finance Authority shall adopt temporary rules to implement this section as soon as practicable

S.L. 2023-134 was ratified by the General Assembly on September 22, 2023. Section 10.1(c) provides the authority/requirement for temporary rule making.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna Hayworth

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(919) 745-9356

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Agency contact, if any:

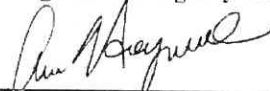
Robert Hosford

Phone:

n/a

E-Mail: largeanimalvetgrants@ncagr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule making coordinator

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

24 NCAC 02D .0106 is proposed for adoption with changes under temporary procedures as follows:

24 NCAC 02D .0106 RECORDS

Grant recipients ~~[must]~~ shall keep financial ~~[and other records]~~ records, as defined in Rule .0102, of the project for a period of five years, following completion of the project, or until audited. The records shall be made available to the Commissioner and the North Carolina Agricultural Finance Authority upon request. ~~[Recipients shall contact the Authority before destroying records or in the event that records are destroyed.]~~ The North Carolina Agricultural Finance Authority shall maintain and dispose of paper and electronic records in accordance with the approved Functional Schedule for North Carolina State Agencies, Program Record Retention and Disposition Schedule and Electronic Records and Imaging Policy, incorporated by reference with subsequent editions and amendments. The policy can be accessed free of charge at <https://archives.ncdcr.gov/documents/functional-schedule-state-agencies>.

*History Note: Authority G.S. 106-1074; Session Law 2023-134 House Bill 259 Section 10.1(c);
Temporary Adoption Eff. January 1, 2025.*